IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3175 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ..Applicant

Versus

Shivaji Tukaram Kolekar & Ors. ..Respondents

Mrs.P.H.Kantharia APP for the State.

Coram : B.H.Marlapalle &
R.S.Mohite,JJ

Date : 22.02.2007.

PC

1. Heard Mrs.Kantharia the learned APP.

2. This is an application by the State praying for leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal passed by the learned 4th Adhoc Additional Sessions Judge, Kolhapur for the offences punishable under Sections 307, 332, 333, 336, 353 and 186 read with section 34 of IPC in Sessions Case No.74 of 2004.

3. As per the prosecution case, the police party led by PSI Gayakwad of Umadi police station was attacked by the accused-respondents when they had come out of their huts with sickles and started pelting stones on the police party. PSI Gayakwad

fired couple of rounds in the air and inspite of that accused no.1 Shivaji assaulted constable Mr.Patel with the sickle and at that stage, PSI Gayakwad fired a round at Shivaji. The bullet hit on the buttock of accused Shivaji and Shivaji immediately fell down on the road.

4. PW-1 Kabir, PW-2 Balu, PW-3 Ranjeet, PW-4 Imtiyaj were all panch witnesses. Whereas PW-7 Dr.Shobha had examined PSI Gayakwad and constable Kadam and issued medical certificates at Exh.32 and 33 respectively. PW-8 Dr.Nutan had examined the injured constable Patel and issued the medical certificate (Exh.35) and PW-9 Madhukar had investigated the offence. As far as injury on constable Patel is concerned, PW-8 Dr.Nutan clearly stated that it was only an abrasion which was possible by the blunt side of the sickle. Under these circumstances, as per the trial Court there was no reason to believe that the sickle has blood stains and therefore, the prosecution case was not free from suspicion. The prosecution had claimed that the attack by sickle was for causing the murder of Mr.Patel. At the same time, the prosecution had conflicting version on the injury sustained by another police staff Kadam. PW-5 Mr.Patel had stated that Kadam sustained injury on his chest while the medical certificate (Exh.33) indicated that he had sustained injury on his left hand. The

trial Court did not find any evidence against accused nos.2 & 3 as well. Under these circumstances, the trial Court was pleased to acquit the accused.

5. We do not find any case made out by the prosecution for our re-consideration based on the evidence that was adduced by the prosecution and hence, this application must fail.

6. The application is therefore, rejected.

(R.S.Mohite,J) **(B.H.Marlapalle,J)**